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Mailed: August 26, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Rockler Companies, Inc.

Serial No. 76098361

James A. Wahl of Mackall, Crounse & Moore for Rockler
Companies, Inc.

Barbara A. Gaynor, Trademark Examining Attorney, Law Office
115 (Tomas Vlcek, Managing Attorney).

Before Seeherman, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Rockler Companies, Inc. has filed an application to
register the mark SURE-LOC on the Principal Register for, as
amended, "accessories for table saws, namely, mitre gauges"
in International Class 9.¹

The Trademark Examining Attorney has issued a final
refusal to register under Section 2(d) of the Trademark Act,

¹ Serial No. 76098361, filed July 27, 2000, based on an allegation of a
bona fide intention to use the mark in commerce. On July 31, 2001,
applicant filed, and the Examining Attorney accepted, its amendment to
allege use, alleging first use and use in commerce as of August 1, 2000,
and its specimen of use.

15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the mark shown below, previously registered for hammers,² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

"SURE-LOCK"

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."

² Registration No. 899,173 issued September 22, 1970, to Vaughan & Bushnell Manufacturing Company Corporation, in International Class 8. [Renewed for a period of ten years from September 22, 2000; Sections 8 and 15 affidavits accepted and acknowledged, respectively.]

Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein. The factors deemed pertinent in this proceeding are discussed below.

The Examining Attorney contends that confusion is likely because the marks are phonetically equivalent and create the same overall commercial impression; and the goods are related. In support of her position, the Examining Attorney submitted copies of third-party registrations that include among the identified goods both mitre saws and/or mitre boxes and hammers³; excerpts from Internet retail web sites which offer both mitre gauges and hammers, although such items are identified by different trademarks; and an excerpt from applicant's retail web site wherein both mitre gauges and hammers are offered, although, again, such items are identified by different trademarks.

Applicant contends that, despite their phonetic equivalence, the marks, viewed in their entirety, are visually different because of the quotation marks in the

³ The original Examining Attorney also submitted third-party registrations for marks that identify goods including hammers and table saws and copies of the results of an Internet search at Yahoo.com that include short excerpted sentences with little or no context. We agree with the present Examining Attorney's acknowledgment that this evidence is of limited value herein. The third-party registrations are of little value because applicant's goods are mitre gauges, not table saws; and the Internet excerpts are too brief to be of any significant value.

registered mark and applicant's intentional misspelling of the word "lock" as LOC. Applicant also argues that the connotations and commercial impressions of the marks differ in view of the different products identified by the respective marks. Applicant states that both marks are suggestive; and that the mark "SURE-LOCK" used in connection with hammers "convey[s] to the purchaser ... that the hammer and handle are securely locked together such that the head will not come off the hammer while in use" (Brief, p. 8), whereas, applicant's mark SURE-LOC used in connection with its identified goods "refers to the user's ability to set and lock an angle at which wood will be cut when using the Applicant's mitre gauge product with a table saw" (*id.*).

Applicant also contends that its identified goods are not related to those identified in the registration. Applicant states that the respective products are for different purposes and are not used together; that "a hammer is not a machine tool, but a hand tool, and a mitre gauge is merely an accessory for a machine tool" (Brief, p. 10); that the web site excerpts submitted by the Examining Attorney do not "support the conclusion that the two goods are ... produced by the same manufacturer" (*id.*); and that the mere fact that the products may be sold in the same store does not mean that the products are related. In support of its position, applicant submitted information from applicant's,

registrant's and third-parties' websites showing various hammers and mitre tools under numerous trademarks; a list of registrations purportedly owned by the cited registrant and a list of purported third-party registrations for various marks⁴; a copy of a registration apparently owned by the cited registrant for the mark BEAR SAW for "manually powered saws; and saw blades for manually powered saws⁵; and copies of third-party registrations and applications for various marks that are phonetically equivalent to registrant's mark SURE-LOCK for a wide variety of goods.⁶

We turn, first, to a determination of whether applicant's mark and the registered mark, when viewed in their entirety, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to

⁴ These lists of registrations are of little probative value as the information about the listed registrations is minimal. Further, a list of registrations is not the proper method for making such registrations of record in a Board proceeding. In order to make these registrations properly of record, soft copies of the registrations themselves, or the electronic equivalent thereof, i.e., printouts of the registrations taken from the electronic records of the United States Patent and Trademark Office's (PTO) own database, should have been submitted. See, *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230 (TTAB 1992).

⁵ Registration No. 2,196,618.

result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

In this case, while the marks are spelled differently, they are phonetically identical and visually similar. The term SURE-LOC would immediately be recognized as the equivalent of the term SURE-LOCK. The minimal spelling difference and the quotation marks and minimal font design in registrant's mark are insufficient to distinguish these marks visually. It is clear from the evidence of record that "SURE-LOCK" and its phonetic equivalents are suggestive of a characteristic of the various goods identified thereby. Because applicant's and registrant's goods differ, the term refers to different characteristics due to the differences in the goods. However, the term is, essentially, a somewhat laudatory term suggesting that the locking mechanism or fit of the respective products is "sure" to hold firm. Thus, even if the suggestive laudatory connotation is different for applicant's and registrant's specific identified goods we find that the overall commercial impressions of the subject marks are substantially similar.

⁶ The pending applications are of limited value because they are evidence only of their filing.

Turning to consider the goods involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

The record before us includes numerous third-party registrations, based on use in commerce, wherein the

registered mark identifies a wide range of tools, including mitre tools, saws and hammers. Although third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, are not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, such registrations nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467 (TTAB 1988).

It is also clear from the Internet evidence that retail online sites offer both mitre gauges and hammers for sale. The evidence shows these products identified either by no trademark or by different trademarks. And we agree with applicant that the mere fact that such products are sold in the same store or on the same Internet site does not per se warrant a conclusion that the goods are related. However, we must also look at the nature of the products involved and while mitre gauges for table saws and hammers will not be used together in the sense suggested by applicant, it is not unlikely that such tools could be used together on the same project/job. We find this fact and the third-party registrations listing both mitre tools and hammers warrant

the conclusion that the goods are sufficiently related that, if identified by confusingly similar marks, confusion as to source is likely.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, SURE-LOC, and registrant's stylized mark, "SURE-LOCK," their contemporaneous use on the related goods involved in this case is likely to cause confusion as to the source or sponsorship of such goods.

We acknowledge that our decision is not free from doubt; however, any doubt as to likelihood of confusion must be resolved against the newcomer and in favor of the prior registrant. *See J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889 (Fed. Cir. 1991); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); and *W.R. Grace & Co. v. Herbert J. Meyer Industries, Inc.*, 190 USPQ 308 (TTAB 1976).

Decision: The refusal under Section 2(d) of the Act is affirmed.